IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.873/99

Virendra Kumar Bhargava

Versus

State

DATE OF ORDER :: 30/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Sanjay Mehrishi, for petitioner
Mr. Arun Sharma, P.P.

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Instant petition is directed against the order dated 31st August, 1999 whereby learned trial Judge took cognizance of committing offence u/s.354 IPC against accused-petitioner.

Complainant Smt. Ratti Bai filed a written report on 28th January, 1998 against accused-petitioner in which it was alleged that on 26th January, 1998 at about 1.30 PM while she was working in her field, the accused-petitioner after crossing the boundary wall, came to her field and started outraging her modesty and caught-hold of her hand and used abusive language. On the basis of said written report, a case was registered against accused-petitioner and after investigation, negative final report was submitted by Investigating Officer. At this stage, protest petition was filed by her. Learned trial Judge considered the record of the case

including final report and so also the statement which was recorded during investigation u/s.161 Cr.P.C. and came to the conclusion that offence has been committed. Consequently, summon was issued to accused-petitioner.

Counsel submits that even from perusal of statements of prosecutrix and her son Om Prakash recorded u/s.161 Cr.P.C., no offence is made out against accused-petitioner and the Investigating Officer has taken note of her statement and so also of independent witnesses and submitted a negative final report which ought to have been taken note of by learned Magistrate while taking cognizance against accused-petitioner.

Counsel for respondent and so also learned Public Prosecutor supported the order and submit that since the written report & the statement of prosecutrix was sufficient to show that offence has been committed which alone was sufficient for learned trial Judge to take cognizance and as such it does not call for interference at this stage.

I have heard counsel for parties and perused the order impugned.

It is true that a negative final report was submitted by the Investigating Officer and the protest petition was filed by complainant and at

this stage, learned trial Judge has taken note of her statement recorded u/s.161 Cr.P.C. and so also of final report which was made and after examining the complete record including negative final report prima facie came to the conclusion that offence as alleged has been committed and thus, took cognizance of the same under order impugned.

This court has also gone through the final report and so also statement of prosecutrix which was recorded u/s.161 Cr.P.C. and does not find any error committed by learned trial Judge in taking cognizance against the accused-petitioner under order impugned.

Consequently, this court does not find any substance in the misc. petition, the same stands dismissed, along with Stay Petition No.697/99. Record be sent back to trial court forthwith and the learned Judge may proceed further with the matter in accordance with law.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.